

SYLVAN S. HEWITT  
DENNIS WALLACE

IBLA 80-364

Decided May 22, 1980

Appeal from decision of the Oregon State Office, Bureau of Land Management, holding the Gold Coin placer mining claims abandoned and void. OR 950-97.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment -- Mining Claims: Recordation

Under 43 U.S.C. § 1744(b) (1976) and 43 CFR 3833.1-2 the owner of an unpatented mining claim located before Oct. 21, 1976, must have filed a copy of the official record of the notice of location or certificate of location of the claim with the proper Bureau of Land Management Office on or before Oct. 22, 1979, or the claim will be deemed to be conclusively abandoned and void under 43 U.S.C. § 1744(c) (1976), and 43 CFR 3833.4.

2. Federal Land Policy and Management Act of 1976: Generally -- Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment -- Mining Claims: Recordation

The Federal Land Policy and Management Act of 1976 does not provide the Bureau of Land Management or the Interior Board of Land Appeals with discretion to waive the effects of failure to comply with the recordation requirements.

APPEARANCES: Willard K. Carey, Esq., Carey and Joseph, La Grande, Oregon, for appellants.

OPINION BY ADMINISTRATIVE JUDGE THOMPSON

Sylvan S. Hewitt and Dennis Wallace appeal from a decision dated November 15, 1979, by the Oregon State Office, Bureau of Land Management (BLM), declaring the Gold Coin placer mining claims abandoned and void for failure to submit a certificate of location on or before October 22, 1979, as required by section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976), and the regulation 43 CFR 3833.1-2(a).

On October 9, 1979, BLM received from appellants a deed to the Gold Coin claims, evidence of annual assessment work performed (proof of labor) on the claims, and a check for \$10. By letter of October 12, 1979, BLM returned the documents and the check to appellants because additional information was needed to record the claims with BLM. An attachment to the letter informed appellants that to complete the filing of the mining claims appellants must resubmit the documents submitted earlier and

provide an exact, legible copy of the (original) and any (amended) notice of location that was recorded in the county records showing county recordation, book, page, and other document numbers as well as the date of recordation. If you have a copy in your possession, reproduce and submit a copy of it; otherwise, you may purchase a copy from the county recorder.

On November 5, 1979, BLM received from appellants a corrected deed to the claims, the earlier submitted proof of labor document, a check for \$10, a notice of location with a location date of August 10, 1964, and an amended notice of location with a location date of August 31, 1976.

In their statement of reasons, appellants "ask for relief from this time constraint particularly in view of the fact that virtually everything required had been submitted to the Bureau of Land Management prior to the deadline." Appellants state that the time delay was a result of having to obtain the notice of location from the county clerk. The pertinent regulation, 43 CFR 3833.1-2(a), implementing section 314(b) of FLPMA, 43 U.S.C. § 1744(b) (1976), provides in relevant part:

(a) The owner of an unpatented mining claim, mill site or tunnel site located on or before October 21, 1976, \* \* \* shall file (file shall mean being received and date

stamped by the proper BLM Office) on or before October 22, 1979, in the proper BLM Office, a copy of the official record of the notice or certificate of location of the claim or site filed under state law. [Emphasis added.]

The certificate of location was not received by BLM by the date required in the above quoted regulation. Failure to file the required notice of location timely must result in a conclusive finding that the claims have been abandoned and are void. 43 U.S.C. § 1744(c) (1976); 43 CFR 3833.4(a).

[2] Appellant's original submission of the proof of labor affidavit and the check for \$10 satisfies the requirements of 43 CFR 3833.2-1 and 43 CFR 3833.1-2(d) respectively. However, the submission of these documents does not cure the failure to file timely the notice of location as required by 43 CFR 3833.1-2(a), quoted above. FLPMA does not provide the Bureau of Land Management or the Interior Board of Land Appeals with discretion to waive the effects of failure to comply with the recordation requirements.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Joan B. Thompson  
Administrative Judge

We concur:

Edward W. Stuebing  
Administrative Judge

Anne Poindexter Lewis  
Administrative Judge

